

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION
NO: 4:12-CV-00291-BR

JUAN COSTILLA,

Plaintiff,

v.

LINCOLN GENERAL INSURANCE
COMPANY,

Defendant.

ORDER

Plaintiff, who is currently incarcerated in a state prison, seeks to file a complaint *in forma pauperis*. Plaintiff's complaint must be dismissed under the "three strikes" provision of the Prison Litigation Reform Act ("PLRA").

The PLRA allows the court to dismiss a prisoner's action "if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury." 28 U.S.C. § 1915(g); see also Tolbert v. Stevenson, 635 F.3d 646, 650 (4th Cir. 2011). Plaintiff has previously filed three cases which have been dismissed as frivolous. Costilla v. Nuckolls, No. 5:12-CT-3074-FL (E.D.N.C. Nov. 5, 2012); Costilla v. McLawhorn, No. 5:11-CT-3204-BO (E.D.N.C. June 22, 2012), appeal dismissed, No. 12-7140 (4th Cir. Sept. 17, 2012); Costilla v. Cassiano, No. 5:11-CT-3259-D (E.D.N.C. June 1, 2012), appeal dismissed, No. 12-7023 (4th Cir. Nov. 7, 2012). Therefore, plaintiff must show that he is under imminent danger of serious physical injury in order to proceed without prepayment of the

filing fee. See 28 U.S.C. § 1915(g). The allegations in the complaint do not suggest that plaintiff is under any such danger. Accordingly, this action is DISMISSED WITHOUT PREJUDICE, and the 7 December 2012 order directing payments of the filing fee from plaintiff's prison trust account is VACATED.

This 18 December 2012.

A handwritten signature in green ink, appearing to read "W. Earl Britt", is positioned above a horizontal line.

W. Earl Britt
Senior U.S. District Judge